



Report to the Auburn City Council

Action Item
Agenda Item No. 6

City Manager's Approval
[Signature]

To: Mayor and City Council Members
From: Lance E. Lowe, AICP, Associate Planner *[Signature]*
Date: December 3, 2012
Subject: Second Reading of An Ordinance Amending the Auburn Municipal Code by Adding Chapter 159.176 *et. seq.* to Regulate Mobile Food Vending on Private Property

The Issue

Should the City Council Adopt a Second Reading of an Ordinance Amending the Auburn Municipal Code by Adding Chapter 159.176 *et. seq.* to Regulate Mobile Food Vending on Private Property?

Conclusions and Recommendation

Staff recommends that the City Council take the following action:

Hold a Second Reading, by Title only, of an Ordinance Amending the Auburn Municipal Code by Adding Chapter 159.176 *et. seq.* to Regulate Mobile Food Vending on Private Property.

Background

On November 19, 2012, the City Council continued the second reading of the ordinance to December 3, 2012.

On October 22, 2012, the City Council held a continued public hearing and adopted the draft Mobile Food Vending Ordinance with minor edits (**Exhibit A of Attachment 1 – Mobile Food Vending Ordinance as Amended by City Council**). (**Bold text** represents added text and ~~strike-out text~~ represents text to be deleted).

A Second Reading is required to finalize the processing of the ordinance. Should the City Council decide to adopt the Second Reading of the Mobile Food Vending Ordinance on December 3, 2012, the Ordinance will become effective thirty (30) days thereafter.

Project Description

The Mobile Food Vender Ordinance (§159.176 *et. seq.*) adds new provisions to the Auburn Municipal Code thereby codifying regulations for Mobile Food Vendors, on private property. As adopted by the City Council, the Mobile Food Vending Ordinance contains the following provisions:

- Mobile food vendors would be prohibited in the Old Town and Downtown Design Review Districts pursuant to Section 159.176.040 (**Attachment 2 – City of Auburn Historic Design Review District Map**);
- Mobile food vendors are required to provide State Board of Equalization (SBE) documentation prior to issuance of a business license (§159.176.050);
- Except for construction sites, the area serving the mobile food vendor shall, at a minimum, be gravel (§159.176.060);
- Mobile food vendors would be required to obtain approval of a Use Permit in the zone districts identified in §159.176.040 by the Planning Commission subject to the performance standards in §159.176.070;
- Mobile food vendors may operate at one location up to 2 hours (§159.176.070 (I));
- Signage shall be displayed: “Please do not use bathroom of adjacent business unless patronizing business” (§159.176.070 (J));
- Only one mobile food vendor shall be allowed per parcel (§159.176.070 (K)); and,
- Exemptions for mobile food vendors are provided for parades, marches, assemblages and construction sites (§159.176.090 (A & B)).

Alternatives Available to Council; Implications of Alternatives

- A. Hold a Second Reading and adopt Ordinance as presented;
- B. Deny the Second Reading; or,
- C. Amend the Ordinance and Introduce and hold a first reading, by title only, as amended.

Fiscal Impacts

Additional costs associated with staff time to implement a new Mobile Food Vending Ordinance are anticipated; however, the proposed ordinance and fee schedule provide for the collection of fees from perspective applicants. It is anticipated that the additional costs will partially be recovered, based upon the updated fee schedule.

The staff costs incurred for the preparation of the draft ordinance, in consultation with the City Attorney, has been budgeted.

Additional Information

Please see the following attachments for more details:

ATTACHMENTS –

1. Rezone Ordinance No. 12-_____ with Attached Mobile Food Vending Ordinance
2. City of Auburn Historic Design Review District Map

**EXHIBITS ON FILE WITH THE CITY CLERK AND
PROVIDED TO CITY COUNCIL PREVIOUSLY UNDER SEPARATE COVER**

EXHIBITS –

- A. November 19, 2012, City Council Staff Report with Attachments & Exhibits
- B. October 22, 2012 City Council Staff Report with Attachments and Exhibits



ATTACHMENTS

ATTACHMENT 1

ORDINANCE NO. 12-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN AMENDING
THE AUBURN MUNICIPAL CODE TO REGULATE MOBILE FOOD VENDING ON
PRIVATE PROPERTY.

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS

Section One: Findings. The City Council of the City of Auburn hereby
finds:

1. Mobile food vending has the potential to pose special dangers to
the public health, safety and welfare of residents of the City that are not posed
by restaurants or food vending from a permanent fixed location.

2. Vending vehicles parked in one location for more than two hours at
a time exacerbate existing traffic problems in congested areas and obstruct
sidewalks. There is an additional safety risk for pedestrians who may cross
public roadways attempting to access the vendors.

3. Mobile food vendors who fail to park their vending vehicle
correctly during a transaction may attract prospective buyers onto public
roadways, creating additional traffic and public safety hazards.

4. Narrow streets, limited off street parking and crowded sidewalks
and the related safety hazards identified above are all especially severe in the
Historic Design Review District. Allowing mobile food vendors in that area of
the City would pose an unacceptable threat to public health and safety, and
would additionally be detrimental to the density, aesthetic, and cultural
concerns of the City.

1 5. With proper regulation, mobile food vendors can provide additional
2 food choices for Auburn residents and visitors.

3 6. The City has an important and substantial public interest in
4 providing regulations to prevent safety, traffic, and health hazards, as well as
5 to preserve the peace, safety, and welfare of the community.

6 7. In accordance with the California Environmental Quality Act the
7 Mobile Food Vending Ordinance is determined to be Categorically Exempt from
8 the provisions of CEQA per Section 15311 (Accessory Structures) and Section
9 15304(e) (Minor Alterations to Land) of the GEQA Guidelines.

10 **Section Two: Code Amendments.**

11 1. Chapter 159.176 is hereby added to the Auburn Municipal Code in the
12 form attached hereto as ***Exhibit A.***

13 **Section Three: Effective Date.** This Ordinance shall take effect thirty
14 days following its adoption as provided by Government Code Section 36937.

15 **Section Four: Severability.** Should any provision, section, paragraph
16 sentence or word of this Ordinance be rendered or declared invalid by any
17 court of competent jurisdiction or by reason of any preemptive legislation, the
18 remaining provisions, sections, paragraphs, sentences or words of this
19 Ordinance shall remain in full force and effect.

20 **Section Five: Certification.** The City Clerk shall certify to the passage
21 and adoption of this Ordinance and shall give notice of its adoption as required
22 by law.

1 DATED: December 3, 2012

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Kevin Hanley, Mayor

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ATTEST:

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Joseph G. R. Labrie, City Clerk

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I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
that the foregoing ordinance was duly passed at a regular meeting of the City
Council of the City of Auburn held on the 3rd day of December 2012 by the
following vote on roll call:

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Ayes:

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Noes:

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Absent:

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Joseph G. R. Labrie, City Clerk

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Chapter 159.176

MOBILE FOOD VENDORS

- Section 159.176.010 Findings.
- Section 159.176.020 Applicability.
- Section 159.176.030 Definitions.
- Section 159.176.040 Zoning and Prohibited Locations.
- Section 159.176.050 Permit and License Required.
- Section 159.176.060 Parking.
- Section 159.176.070 Sales from Vending Vehicles.
- Section 159.176.080 Reserved.
- Section 159.176.090 Exception.
- Section 159.176.100 Severability.

Section 159.176.010 Findings.

The City Council finds as follows:

- A. Mobile food vending has the potential to pose special dangers to the public health, safety and welfare of residents of the City that are not posed by restaurants or food vending from a permanent fixed location.
- B. Mobile food vendors who fail to park their vending vehicles correctly may block access to property by the public, or interfere with the regular flow of traffic. Improper parking may also interfere with emergency response personnel or other necessary public services.
- C. Narrow streets, limited on-street parking, crowded sidewalks, and the related safety hazards identified above are all especially severe in the Historic Design Review District of Auburn. Allowing mobile food vendors in those areas of the City would pose an unacceptable threat to public health and safety, and would additionally be detrimental to the density, aesthetic, and cultural concerns of the City as described in Title XV of this Code.
- D. The City has an important and substantial public interest in providing regulations to prevent safety, traffic, and health hazards, as well as to preserve the peace, safety, and welfare of the community.
- E. With proper regulation, Mobile Food Vendors can provide additional food choices for Auburn residents and visitors.

Section 159.176.020 *Applicability.*

The Mobile Food Vending provisions 159.176 et. seq. shall apply to mobile food vending on private property regulated by the Zoning Ordinance of the Auburn Municipal Code. Mobile Food Vending being conducted in the Public Right of Way is regulated pursuant to Section 72.31 et. seq.

Section 159.176.0380 Definitions.

For the purposes of this chapter, the following phrases shall have the meaning respectively ascribed to them by this section:

- A. "Food" or "foodstuff" means and refer to any substance as defined by Section 113781 of the California Health and Safety Code, defined as a raw, cooked, or processed edible substance, ice, beverage, an ingredient used or intended for use or for sale in whole or in part for human consumption, and chewing gum.
- B. "Food preparation" means and refers to packaging, processing, assembling, portioning, or any operation that changes the form, flavor, or consistency of food, but does not include trimming of produce, as set forth by Section 113791 of the California Health and Safety Code.
- C. "Mobile food merchant" means and refers to any individual that operates or assists in the operation of a vending vehicle in the sale, display, solicitation or offer for sale, barter, exchange, gift or otherwise of foodstuffs from a vending vehicle.
- D. "Mobile food vending" means and refers to the sale, display, solicitation or offer for sale, barter, exchange, gift or otherwise, of foodstuffs from any vending vehicle.
- E. "Vending operations" means and refers to the sale, display, solicitation, offer for sale, barter, exchange, gift or otherwise of foodstuffs from a vending vehicle.
- F. "Vending vehicle" means and refers to any self-propelled, motorized device by which any person or property may be propelled or moved upon a highway, excepting a device moved exclusively by human power, or which may be drawn or towed by a self-propelled, motorized vehicle, or used exclusively upon stationary rails or tracks, from which foodstuffs are sold, displayed, solicited or offered for sale, bartered, exchanged, given or otherwise.

Section 159.176.040 *Zoning and Prohibited Locations.*

- A. Mobile food vendors may be located on property with the following zoning designations:
 - 1. Neighborhood Commercial (C-1)
 - 2. Central Business (C-2)
 - 3. Regional Commercial (C-3)

4. Office Building (OB)
 5. Industrial Park (M-1)
 6. Industrial (M-2)
 7. Light Manufacturing (M-L)
 8. Airport Industrial (AI-DC)
- B. Notwithstanding paragraph A of this section, no mobile food vending vehicle may operate in the ~~Old Town~~ Historic Design Review Districts as described in section 159.493 of this Code.
- C. Mobile food vending operations may be located on vacant property.

Section 159.176.050 Permit and License Required.

- A. **Use Permit.** A mobile food merchant must obtain a use permit prior to commencing vending operations.
- B. **Business License.** A mobile food merchant must obtain a business license prior to commencing vending operations.
- ~~C. **Downtown Business Improvement District (BID) Taxes.** A mobile food merchant shall be subject to the City's Downtown Business Improvement District (BID) Assessments.~~
- D. **State Board of Equalization (SBE) Documentation.** A mobile food vendor shall provide a copy of their resale certificate number demonstrating registration and Use Tax payment (county pool) information received from SBE for their Mobile Food Vendor businesses.
- E. **Display.** All vending vehicles shall have displayed in a conspicuous place any permits required by this ordinance, or any other applicable law.

Section 159.176.060 Parking.

- A. A vending vehicle may not park for purposes of vending operations in such a way as to interfere with required parking for existing uses on the site.
- B. ~~The area serving the mobile food vending operations may be un-paved~~ shall, at a minimum, consist of gravel, except for construction sites.

Section 159.176.070 Sales from Vending Vehicles.

- A. Vending vehicles must be brought to a complete stop and be lawfully parked prior to initiating vending operations.
- B. The vending vehicle, signage, tables, and any other objects that are used for vending operations may not be placed so as to interfere with or obstruct access to the site for vehicles or pedestrians. The vehicle and all equipment associated with vending operations shall be positioned in such a way as to ensure safe ingress and egress of patrons and other members of the public to the site.
- C. A mobile food vendor shall not serve customers adjacent to a public sidewalk

under circumstances where the vendor, his equipment, and his customers obstruct passage of the public sidewalk, paths, stairs, walkways, or doorways for all users, including those with mobility disabilities.

- D. No signs may be placed in the sidewalk, street, parking spaces, or public right of way.
- E. Mobile food merchants operating a vending vehicle must provide or have garbage receptacles readily available for immediate use by customers of the vending vehicle.
- F. Mobile food merchants operating a vending vehicle must pick up, remove and dispose of all garbage, refuse or litter consisting of foodstuffs, wrappers, and/or materials at one time dispensed from the vending vehicle, and any residue deposited on the street from the operation thereof, and shall otherwise maintain in a clean and debris-free condition the entire area where mobile food vending is occurring.
- G. A vending vehicle must be parked so as to comply with Health & Safety Code section 114315.
- H. A vending vehicle shall be fully self contained including, but not limited to: mechanical holding units, gas or electric cooking equipment, water tank and hand sinks.
- I. Mobile food vendors may operate at one location for up to 2 hours in each 24 hour period.
- J. Mobile food vendors shall display a sign which states: "Please do not use bathroom of adjacent businesses unless patronizing business."
- K. Only one Mobile Food Vendor shall be allowed per parcel or site.

Section 159.176.080 Reserved.

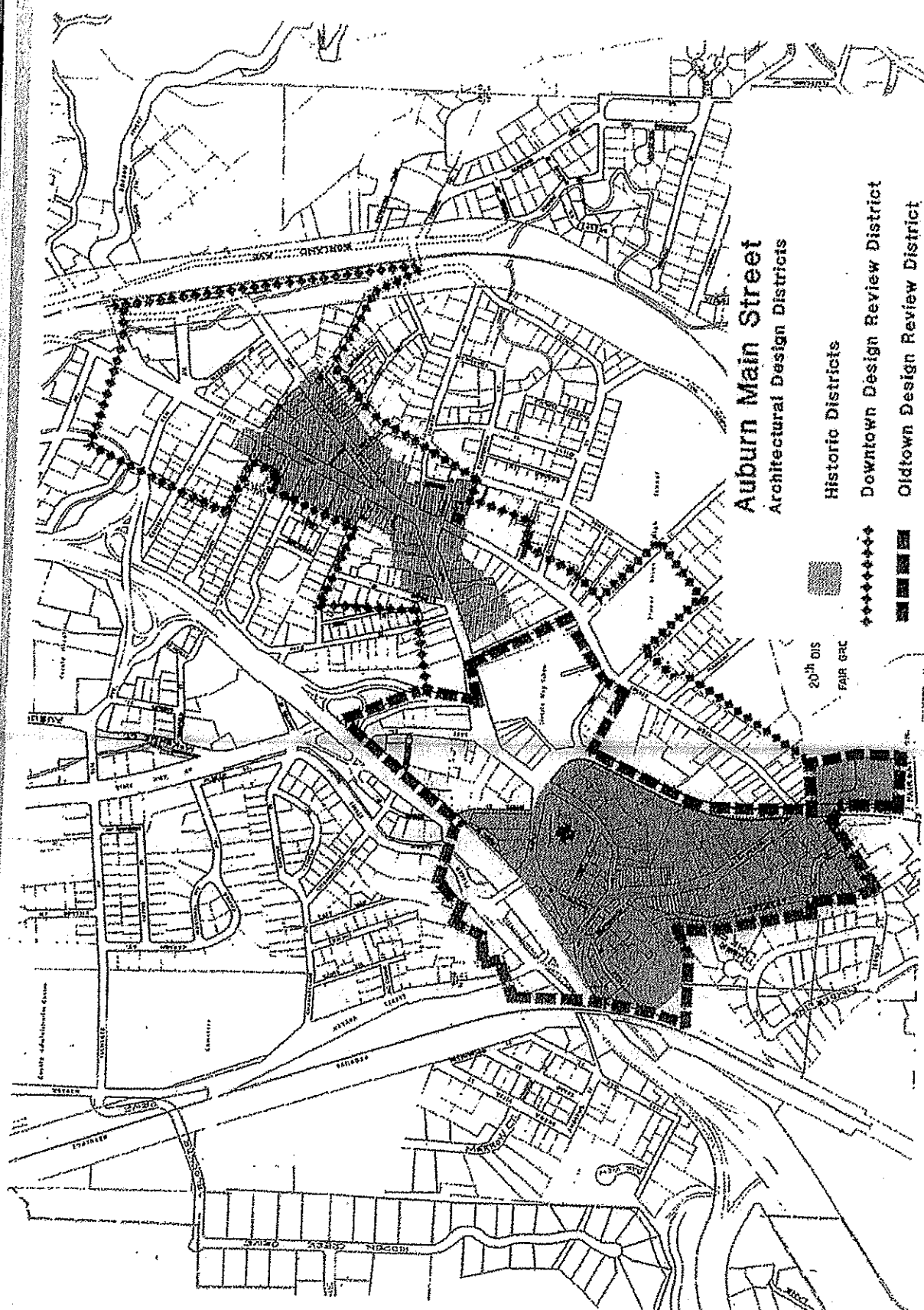
Section 159.176.090 Exceptions.

- A. Any mobile food merchant identified in an application for parades, marches, and assemblages or outdoor festivals, submitted pursuant to Chapter 91 and Chapter 92 respectively of this Code or a Film Permit or any other City sponsored or approved event shall be exempt from the requirements of this Chapter pertaining to mobile food vending, provided that all of the following conditions are met:
 - 1. The vending vehicle is parked no longer than the duration of the special event to conduct its business.
 - 2. The vending vehicle is parked so as to comply with Health & Safety Code section 114315.
 - 3. A City of Auburn Business License has been obtained prior to operation.
- B. Any mobile food merchant serving a construction site shall be exempt from obtaining a use permit provided that all of the following conditions are met:

1. Vending vehicles must be brought to a complete stop prior to initiating vending operations.
2. The vending vehicle, signage, tables, and any other objects that are used for vending operations may not be placed so as to interfere with or obstruct access to the site for vehicles or pedestrians. The vehicle and all equipment associated with vending operations shall be positioned in such a way as to ensure safe ingress and egress of patrons and other members of the public to the site.
3. A mobile food vendor shall not serve customers adjacent to a public sidewalk under circumstances where the vendor, his equipment, and his customers obstruct passage of the public sidewalk, paths, stairs, walkways, or doorways for all users, including those with mobility disabilities.
4. No signs may be placed in the sidewalk, street, parking spaces, or public right of way.
5. Mobile food merchants operating a vending vehicle must provide or have garbage receptacles readily available for immediate use by customers of the vending vehicle.
6. Mobile food merchants operating a vending vehicle must pick up, remove and dispose of all garbage, refuse or litter consisting of foodstuffs, wrappers, and/or materials at one time dispensed from the vending vehicle, and any residue deposited on the street from the operation thereof, and shall otherwise maintain in a clean and debris-free condition the entire area where mobile food vending is occurring.
7. A vending vehicle must be parked so as to comply with Health & Safety Code section 114315.
8. A vending vehicle shall be fully self-contained including, but not limited to: mechanical holding units, gas or electric cooking equipment, water tank and hand sinks.
9. Mobile food vendors may operate at one location for up to 2 hours in each 24 hour period.
10. A City of Auburn Business License has been obtained prior to operation.

Section 159.176.100 Severability.

If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this Ordinance shall nonetheless remain in full force and effect. The City Council of the City of Auburn hereby declares that it would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Section be declared invalid or unenforceable and, to that end, the provisions of this Section are severable.



Auburn Main Street Architectural Design Districts

- Historic Districts
- Downtown Design Review District
- Oldtown Design Review District

20th DIS
FAIR GRC

EXHIBITS

ON FILE WITH THE CITY CLERK AND
PROVIDED TO CITY COUNCIL UNDER
SEPARATE COVER

